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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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DOROTHY SHINDER,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

---

ON PETITION FOR REVIEW OF THE DECISION OF THE  
TAX COURT OF THE UNITED STATES

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BRIEF FOR THE RESPONDENT

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# I N D E X

	<u>Page</u>
Opinion below -----	1
Jurisdiction -----	1
Questions presented -----	2
Statutes involved -----	2
Statement -----	4
Summary of argument -----	5
Argument:	

I. The Tax Court did not err in its determination that taxpayer was not entitled to file her 1963 federal income tax return as a head of a household -----	6
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II. The Tax Court did not err in its determination that expenditures deducted by taxpayer were personal in nature, and were therefore not deductible -----	8
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Conclusion -----	11
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## CITATIONS

### Cases:

<u>Barclay &amp; Co. v. Edwards</u> , 267 U.S. 442 -----	7
<u>Beers v. Glynn</u> , 211 U.S. 477 -----	7
<u>Brushaber v. Union Pac. R. R. Co.</u> , 240 U.S. 1 ----	7
<u>Commissioner v. Duberstein</u> , 363 U.S. 278 -----	8
<u>Deputy v. du Pont</u> , 308 U.S. 488 -----	10
<u>Heiner v. Donnan</u> , 285 U.S. 312 -----	7
<u>Interstate Transit Lines v. Commissioner</u> , 319 U.S. 590 -----	10
<u>Kissel v. Commissioner</u> , 15 B.T.A. 1270 -----	10
<u>McCray v. United States</u> , 195 U.S. 27 -----	7
<u>White v. United States</u> , 305 U.S. 281 -----	10

### Constitution and Statutes:

#### Constitution of the United States of America:

Amendment IV -----	7
Amendment V -----	7
Amendment XIII -----	7
Amendment XIV -----	7
Amendment XV -----	7
Amendment XVI -----	7
Art. I -----	7

#### Internal Revenue Code of 1954:

Sec. 1 (26 U.S.C. 1964 ed., Sec. 1) -----	2
Sec. 262 (26 U.S.C. 1964 ed., Sec. 262) -----	3



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OPINION BELOW

The memorandum findings of fact and opinion of the Tax Court  
(Doc. No. 12) are not officially reported.

JURISDICTION

This petition for review (Doc. No. 14) involves a deficiency in  
Federal income tax for the taxable year 1963 in the amount of \$62.88.  
On October 13, 1965, the Commissioner of Internal Revenue mailed  
to the taxpayer a notice of deficiency, asserting a deficiency in  
income tax in the amount of \$62.88. (Doc. No. 2, Ex. A.) Within  
ninety days thereafter, on December 13, 1965, the taxpayer filed  
a petition with the Tax Court for a redetermination of this

deficiency, under the provisions of Section 6213 of the Internal Revenue Code of 1954. (Doc. No. 2.) The decision of the Tax Court was entered April 7, 1967. (Doc. No. 13.) The case is brought to this Court by a petition for review filed April 25, 1967 (Docs. No. 1, 14), within the three-month period prescribed in Section 7483 of the Internal Revenue Code of 1954. Jurisdiction is conferred on this Court by Section 7482 of that Code.

#### QUESTIONS PRESENTED

1. Whether the Tax Court erred in its determination that taxpayer was not entitled to file her 1963 Federal income tax return as a head of a household.

2. Whether the Tax Court erred in its determination that expenditures deducted by taxpayer were personal in nature, and were therefore not deductible.

#### STATUTES INVOLVED

Internal Revenue Code of 1954:

##### SEC. 1. TAX IMPOSED.

\* \* \*

##### (b) Rates of Tax on Heads of Households.--

\* \* \*

(2) Definition of head of household.--For the purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in section 2 (b)), and either--

(A) maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(i) a son, stepson, daughter, or step-daughter of the taxpayers, or a descendant of a son or daughter of the taxpayers, but if such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(B) maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such father or mother under section 151.

For purposes of this paragraph and of section 2 (b) (1) (B), an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

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(26 U.S.C. 1964 ed., Sec. 1.)

#### SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(26 U.S.C. 1964 ed., Sec. 262.)

STATEMENT

The facts, some of which were stipulated (Doc. No. 10) as found by the Tax Court, are substantially as follows (Doc. No. 12):

The Commissioner determined a deficiency in taxpayer's income tax for the taxable year 1963 in the amount of \$62.88. Taxpayer claims an overpayment in tax. Taxpayer is a single woman residing in San Francisco, California. Her individual income tax return for the taxable year 1963, together with four amended returns, was filed with the District Director at San Francisco, California.

During 1963, taxpayer resided alone in a rented apartment in San Francisco. She had no one dependent on her for support, nor did she expend any amount for the support of any other person.

During 1963, taxpayer spent \$225 in painting her apartment, \$25 for shelving therein, \$70 for expenses of moving from one apartment to another in San Francisco, and \$1,020 for rent of her apartments. Her respective landlords paid real estate taxes upon the buildings in which her apartments were located. Taxpayer claimed deductions for all of these expenditures either in her original or in her amended returns. The Commissioner disallowed each of these expenditures. The Tax Court upheld the Commissioner's determination. Taxpayer now petitions for review by this Court.



### SUMMARY OF ARGUMENT

Taxpayer's petition for review in this case has absolutely no merit. It involves, in part, nothing more than an attempt by the taxpayer to lodge a protest on behalf of single persons who live alone, and is therefore an appeal which should properly be made to Congress, and not to this Court.

Taxpayer filed her 1963 federal income tax return as head of a household. The facts, as testified to by the taxpayer, as stipulated, and as found by the Tax Court, clearly show that the taxpayer meets none of the requirements set forth by the statute for filing a return as head of a household. The Tax Court correctly found that the taxpayer was not entitled to file her return as head of a household.

Taxpayer also claimed deductions on her 1963 federal income tax return for expenses incurred in painting her apartment, expenses for shelving therein, moving expenses, and rent, based on her contention that she is properly to be considered as head of a household. It is well established that these are personal living expenses for which no deduction is allowed, whether or not taxpayer is head of a household. Taxpayer also claimed a deduction for taxes paid upon the buildings wherein her apartments were located. This claim is entirely without merit since the taxpayer neither paid such taxes nor was under an obligation to pay such taxes, her claim resting entirely upon her assertion that since part of the rent which she paid was used by the owners to pay real estate taxes, she should be able to deduct such taxes.

The Tax Court's decision is amply supported by the record and should be affirmed.

#### ARGUMENT

##### I

THE TAX COURT DID NOT ERR IN ITS DETERMINATION THAT TAXPAYER WAS NOT ENTITLED TO FILE HER 1963 FEDERAL INCOME TAX RETURN AS A HEAD OF A HOUSEHOLD

Section 1 of the Internal Revenue Code of 1954, supra, provides the tax rates for persons filing their federal income tax returns as heads of households. A head of a household is defined, under Section 1, as an individual who is not married at the close of his taxable year, is not a surviving spouse, and either maintains as his home a household which constitutes the principal place of abode of a son, stepson, daughter or stepdaughter, or a descendent thereof or any person who is a dependent of the taxpayer, or maintains a household which constitutes the principal place of abode of the taxpayer's father or mother.

Taxpayer, in the instant case, meets none of the requirements set forth under Section 1 for filing a return as head of a household with the exception of the one requiring that she not be married at the close of her taxable year. Yet, for the taxable year 1963, she filed her income tax return as a head of a household. Taxpayer does not allege, nor does the record show, that she maintains a home which constitutes the principal place of abode for any of the persons listed under Section 1(b)(2) of the Code during the taxable year involved herein. The record shows, and the taxpayer testified, that

he lives alone in an apartment. She testified that no one who  
s dependent upon her lives with her. (Doc. No. 11, p. 22.)  
Indeed, there is no evidence that taxpayer has any dependents.  
Taxpayer obviously does not come within the requirements for  
filing as a head of a household, nor does she make any attempt to  
show that she meets such requirements. Her brief (p. 12) and her  
testimony indicate that she filed her return as a head of household  
in protest (Doc. No. 11, pp. 12-13):<sup>1/</sup>

Miss Shinder: The next issue is what brought me  
to file as head of a household in protest.

We like to think that there is protection for the  
people from the laws that exist--

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\*

\*

/ Taxpayer's pleadings and brief suggest Constitutional issues  
which have no merit. (Docs. No. 2 and 5; Br. 18, 32, 41-43.)  
he contends that to deprive her of the status of head of a house-  
hold under Section 1(b)(2) of the Code would amount to a denial  
to her of equal protection of the laws under Amendment XIV of the  
Constitution, and that to deprive her of this status would be  
discriminatory against all persons in like circumstances. The  
power to tax necessarily involves the power to classify for purposes  
of taxation, and where there are differences between the subjects  
that are taxed, Congress does not transcend the limits of its  
taxing power by taxing them differently. Brushaber v. Union Pac.  
. R. Co., 240 U.S. 1; McCray v. United States, 195 U.S. 27;  
Harclay & Co. v. Edwards, 267 U.S. 442. Neither the Fifth nor  
the Fourteenth Amendment, if operative, forbids reasonable  
classification. Beers v. Glynn, 211 U.S. 477; Heiner v. Donnan,  
251 U.S. 312. Taxpayer also claims that her rights under Article I  
and Amendments IV, V, XIII, XIV, XV, and XVI of the United States  
Constitution have been violated (Br. 32), although we are at a  
loss as to who she is alleging violated these rights.

Miss Shinder: But because I was renting and I was in my household, this all worked together and the government would not recognize the fact that because I lived alone, because I paid my own rent and because I had all these expenses, even though the law was written determining what a head of household was, every other individual received some kind of a benefit, except those who were single and lived alone.

The Tax Court's finding that taxpayer was not entitled to the status of head of a household is amply supported by the record, not clearly erroneous, and therefore should be sustained.

Commissioner v. Duberstein, 363 U.S. 278.

## II

THE TAX COURT DID NOT ERR IN ITS  
DETERMINATION THAT EXPENDITURES  
DEDUCTED BY TAXPAYER WERE PERSONAL  
IN NATURE, AND WERE THEREFORE NOT  
DEDUCTIBLE

Taxpayer claimed deductions on her 1963 original and amended income tax returns of \$225 for expenses incurred in painting her apartment, \$25 for shelving therein, \$70 for expenses of moving from one apartment to another in San Francisco, and \$1,020 for <sup>2/</sup> of her apartments. (Doc. No. 12; Br. 3, 31.) Taxpayer also contended that she is entitled to a deduction for taxes paid upon the buildings wherein her apartments were located. (Br. 3, 31.) The Commissioner disallowed all of taxpayer's claimed deductions.

2/ On brief (pp. 3, 31), taxpayer alleges that she is also entitled to an allowable deduction of \$1,000 for damages which she claims she sustained because she was excluded from redevelopment and rent subsidy plans, and suffered a loss of her home through unfair practices. We know of no provision under the Code which would allow taxpayer such a deduction, nor does taxpayer point us to any provision allowing such a deduction.

Taxpayer testified at the Tax Court proceeding that the deductions which she claims for painting her apartment, for shelving, for moving expenses, and rent are based on the fact that she should properly be considered as head of a household for tax purposes. (Doc. No. 11, pp. 22-24.) Yet, on brief (p. 21), she alleges that she was badgered into making this claim, and that what she intended was to point out that her "rented apartment's additional expenses were separate and apart from the issue of Head of Household and that they were an additional injustice!"<sup>3/</sup> The Tax Court correctly found that these expenses were not deductible in any event, whether or not taxpayer was allowed to file as head of a household. The court stated (Doc. No. 12, p. 4):

We are at a loss to understand how such expenses would be deductible even though petitioner were held to be the head of a household.

The expenses of painting, shelving, moving, and rent which taxpayer seeks to deduct fall squarely within Section 262 of the Internal Revenue Code of 1954, supra, as non-deductible personal expenses.

/ Taxpayer also claims (Br. 20-21) that she amended her petition (Doc. No. 5) to put into issue the deductibility of \$1,020 for rent, \$876.24 for withheld federal income tax, \$1,000 redevelopment including rent supplement, and \$68 survivors benefit, and suggests that the Tax Court failed to take these claimed deductions into consideration. These claimed deductions were dealt with in the testimony before the Tax Court, and on cross-examination it was explained that the \$1,000 in redevelopment referred to the urban renewal program of federal, state, and local Government (Doc. No. 11, p. 31-32); the \$68 in survivor benefits referred to payment to the estate of California's survivor's benefit insurance for state employees (Doc. No. 11, p. 32). The \$876.24 is the amount of federal income tax withheld from taxpayer's income during 1963. (Doc. No. 11, p. 27-28.)



Section 262 of the Code expressly disallows the deduction of personal, living, or family expenses. Deductions are a matter of legislative grace, and in order for taxpayer to receive the claimed deductions, she must be able to point to a specific provision of the Code and show that she comes within that provision. White v. United States, 305 U.S. 281; Deputy v. du Pont, 308 U.S. 488; Interstate Transit Lines v. Commissioner, 319 U.S. 590. Taxpayer has made no attempt to show that she is entitled to the claimed deductions under any provision of the Code, other than that she should be allowed to file a return as head of a household. Taxpayer has not met her burden of proving that these deductions are anything other than non-deductible personal expenses.

Taxpayer also claims that she is entitled to a deduction for taxes paid upon the property where her apartments were located. (Br. 3, 31.) She paid no such taxes, but alleges that she should be able to deduct that portion of the rentals paid by her which was used by the landlords to pay the real estate taxes. This claim is entirely without merit. The obligation to pay real estate tax upon the properties in which taxpayer's apartments were located rested on the owners of those properties and not on the taxpayer. Taxpayer did not pay the taxes personally and, even assuming that she had paid such taxes, since the obligation to pay such taxes was not hers, they would not be deductible by taxpayer. Kissel v. Commissioner, 15 B.T.A. 1270. Her payment of rent was purely a non-deductible personal expense.

The Tax Court's finding on this issue is a factual one, supported by the record, and should be affirmed.

CONCLUSION

For the reasons stated above, the decision of the Tax Court  
is correct, and should be affirmed.

Respectfully submitted,

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January, 1968.

CERTIFICATE

I certify that, in connection with the preparation of this  
brief, I have examined Rules 18, 19, and 39 of the United States  
Court of Appeals for the Ninth Circuit, and that, in my opinion,  
the foregoing brief is in full compliance with those rules.

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Attorney

Dated: \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

